

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Attorney Fees

After successfully prosecuting claims for copyright infringement and federal unfair competition under the Lanham Act, plaintiffs petitioned for attorney fees and costs. Judge Anna J. Brown rejected a defense objection regarding the adequacy of supporting documentation and apportionment of costs by claims. The court found the tasks sufficiently identified and segregated. Judge Brown applied a federal lodestar analysis and held that the number of hours expended and rates requested (\$250/hour for lead counsel) were reasonable.

Defense objections based upon an alleged six month delay in bringing the action were also rejected in the absence of specific prejudice.

Under the Lanham Act, the court found that plaintiffs presented an "exceptional" case due, in large measure, to the jury's finding of willful infringement.

On costs, the court declined to award photocopy costs for an unsuccessful summary judgment motion filed by plaintiff. The court

also rejected "overhead" type costs such as office supplies, telephone charges, fax charges and computer legal research. Judge Brown limited plaintiffs' § 1920 cost recovery to the \$45 expended to obtain certified copies of plaintiffs' copyright registrations. The Hearst Corp. v. Oregon Worsted Co., CV 99-640-BR (April 18, 2001).

Plaintiffs' Counsel:

Michael Ratoza

Defense Counsel: Vicki Smith

## International Law

Judge Jelderks denied a motion to dismiss a wrongful death action brought by the estate of an Oregon couple killed in an airplane crash in Indonesia. The decedents purchased round trip tickets for a flight between Oregon and Jakarta, Indonesia, with stops along the way. After arriving in Jakarta, they decided to add an additional stop in Medan, Indonesia. The flight to Medan crashed, killing all on board.

Judge Jelderks determined that this claim is governed by the Warsaw Convention, even though the crash occurred on a nominally "domestic" flight, because the flight

was a leg of a single international round trip that began (and was intended to end) in Oregon. The court rejected the airline's argument that the Jakarta to Medan flight should be viewed in isolation from the rest of the trip because the tickets for that leg were purchased after arriving in Indonesia. The court also rejected the airline's argument that Indonesia was the only proper venue. Under the Warsaw Convention, an action may be filed at the place of the traveler's ultimate "destination," which was Oregon.

The airline also invoked sovereign immunity, on the ground it is controlled by the government of Indonesia. Judge Jelderks concluded that the airline had waived sovereign immunity with regard to this claim as a condition of obtaining a permit to operate flights to the United States. The court also concluded that personal jurisdiction was proper in Oregon. The Warsaw Convention greatly restricts the permissible venues, and allows the passenger to choose from among the remaining venues. By implication, the airline

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consents to jurisdiction at the specified locations. The court also found sufficient minimum contacts with Oregon and with the United States as a whole, and that requiring the airline to defend in Oregon did not violate due process.

Finally, the court denied the airline's forum non conveniens motion. The airline presented no evidence to show that Indonesia was an adequate alternative forum, or that the estate could maintain this action against the sovereign in the courts of Indonesia. The airline also failed to establish that it would be unduly burdensome to defend in Oregon, or that the relevant private and public factors favored a transfer.

Coyle v. P.T. Garuda Indonesia, 99-1348-JE ( F&R issued on April 30, 2001 adopted by Judge Jones on June 28, 2001).

Plaintiff's Counsel:

Floyd A. Wisner (Chicago),  
Susan R. Swanson (local)

Defense Counsel:

Alan Reitzfeld (New York),  
Jonathan M. Hoffman (local)

## Contracts

Judge Janice M. Stewart held that a contract provision in an exclusive dealership agreement regarding the scope of the territory was ambiguous both on its face and within the context of the entire

Dealer Agreement. Applying principles of Oregon contract law, the court concluded that genuine issues of fact existed relative to the meaning of the contract. Examining extrinsic evidence of the parties' intent was also inconclusive. Thus, Judge Stewart denied plaintiff's motion for summary judgment against the dealer's counterclaims. Thomas v. United Equipment Sales, Inc., CV 99-1265-ST (Opinion, March 8, 2001).

Plaintiff's Counsel:

James Herald  
Defense Counsel:  
Steven Berne

## Environment

The Rogue Alliance sought to intervene in an action seeking a declaration that the Forest Service failed to comply with the National Environmental Policy Act, the National Forest Management Act and the Wild and Scenic Rivers Act when it issued special use permits allowing motorboat use within the wild segment of the Rogue River. The plaintiffs also seek injunctive relief enjoining motorboat use in excess of certain levels. Relying on Ninth Circuit precedent, the court allowed intervention with respect to the remedial phase of the proceedings but denied intervention in the liability phase. The court reasoned that under the Ninth Circuit "none but a federal

defendant" rule, the Alliance could not show a protectable interest in whether the Forest Service complied with the pertinent statutes.

Riverhawks v. Zepede, Civ. No. 01-3035-AA (Order, August 24, 2001).

Plaintiff's Counsel:

Peter Frost (Local)  
Defense Counsel: Tom Lee

## Administrative Law

Judge Anna J. Brown denied a defense motion to dismiss an action seeking mandamus relief against a Social Security ALJ who allegedly has unreasonably delayed conducting hearings on plaintiffs' claims for disability benefits. The court held that plaintiffs adequately stated claims for relief since an ALJ has a mandatory duty to provide hearings within a reasonable time. Judge Brown also rejected defendant's argument that the claims for declaratory and injunctive relief should be dismissed on grounds of judicial immunity. Finally, the court denied plaintiffs' motion for sanctions on procedural grounds. Bayliss v. Madden, CV 01-415-BR (Opinion, Aug. 24, 2001).

Plaintiffs' Counsel:

David Lowry  
Defense Counsel:  
William Youngman